



Appeal Decision

Site visit made on 23 November 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2021

Appeal Ref: APP/B0230/C/20/3255807

Land adjoining 31 Stratford Road, Luton, Bedfordshire LU4 8NG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Kamran Bashir against an enforcement notice issued by Luton Council.
 - The enforcement notice was issued on 1 June 2020.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of the Land from an ancillary use associated with the dwellinghouse at 31 Stratford Road, to a self-contained residential use. ("The Unlawful Use")
 - The requirements of the notice are:
 1. Cease the Unlawful Use
 2. Remove the kitchen and its associated fittings and fixtures from the detached single storey building on the land adjoining 31 Stratford Road, Luton, LU4 8NG, also known as 31A Stratford Road, Luton, LU4 8NG
 3. Remove all waste and debris generated from compliance with step 2 from the Land.
 - The period for compliance with the requirements is nine calendar months after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice upheld.

Procedural Matters

2. The appellant ticked grounds (a) and (f) on the appeal form. However, it was confirmed during the appeal that the appellant wishes to pursue grounds (d) and (f) only. I have considered the appeal on that basis. Since there is no ground (a) appeal, the planning merits of the appeal scheme are not before me.

Ground (d)

3. An appeal on ground (d) is made on the basis that, at the date when the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Section 171B(1) of the Town and Country Planning Act 1990 (as amended)(the 'Act') sets out that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

4. Since the enforcement notice was issued on 1 June 2020, to succeed on ground (d), the appellant must prove on the balance of probability that the use of the property changed to use as a self-contained residential unit on or before 1 June 2016¹; and if so (ii) whether that use then continued without significant interruption for at least 4 years thereafter.
5. Planning permission 09/00032/FUL was granted for the erection of detached single storey annexe on 19 March 2009, subject to conditions, including condition 2 which states "The development hereby permitted shall be used only insofar as it forms an annexe or extension to the dwelling known as 31 Stratford Road and shall at no time be occupied as a separate or self-contained dwelling unit." The appellant advises that the building was constructed following the grant of planning permission and was occupied by an elderly member of the extended family until early 2015 when they were taken into care. The appellant asserts that the property has been occupied continuously by tenants since 15 April 2015.
6. The appellant suggests that the statement in the notice, that the breach of planning control occurred within the last four years of the application, after 1st June 2016, implies that the Council confirms the occupancy as a separate dwelling from 1 June 2016 until 25 June 2019. However, this is plainly not an admission by the Council that the property was fully occupied during this period but is a necessary part of the enforcement notice.
7. An application, reference 19/00911/LAWE was submitted for a Lawful Development Certificate (LDC) for the use of the appeal building as a self-contained flat. This application was the subject of an appeal, reference APP/B0230/X/19/3238225 which was dismissed. The Council state that the tenancy agreements are inaccurate and do not provide definitive proof of continuous occupation for a period of over four years. Reference in this regard is made to the aforementioned appeal decision where the Inspector pointed out several inaccuracies and unjustified overlaps in the series of tenancy agreements.
8. The appellant suggests the period of vacancy between 14 April 2016 and 18 August 2016 can be explained by the building being occupied by the same tenant on a monthly letting with a rolling renewal basis. Although the tenancy agreement provided makes provision for such periodic tenancy, there is no documentary evidence to show that this is what occurred. This is a significant omission in the evidence given the relevant date is 1 June 2016.
9. There is also an apparent gap in occupation between 20 January 2018 and 12 August 2018. The appellant has provided a tenancy agreement dated 20 July 2017 and an associated Surrender of Tenancy (SoT) document dated 12 August 2018. The tenancy agreement states that a fee of £45.00 will be payable for the renewal of the tenancy agreement. Had the agreement been extended I would expect to see some form of documentary evidence confirming its extension.
10. I do have concerns about the authenticity of a number of the tenancy agreements provided. In respect of the document dated 18 August 2016, there are significant similarities in handwriting used by the different signatories. In respect of the document dated 20 July 2017, including the associated SoT

¹ This being the date 4 years prior to the date the enforcement notice was issued.

document, the signatures stated to be signed by the tenant do not appear to correspond to the name of the tenant. This limits the weight that I can attribute to the documents provided. Furthermore, tenancy agreements are not, in my view, definitive evidence that a building has been occupied as a self-contained residential unit without significant interruption for at least 4 years.

11. The appellant provided a series of gas and electric bills which identify the supply address as 31a Stratford Road. However, the documents provided do not cover the entire 4 year period and are in a different name to those detailed on the respective tenancy agreements. The appellant suggests that later utility bills have been made liable for payment by the tenants and are therefore unavailable to the landlord. Whilst this may be true, this significantly limits the usefulness of the documents as they do not demonstrate continuous use.
12. The previous Inspector² made it clear that, in respect of the LDC application, the appellant had provided insufficient precise and unambiguous evidence that the use had acquired lawfulness. I note the appellant disputes the Inspector's conclusion and considers the LDC should have been issued. However, I am not aware that the Inspector's decision has been challenged through the courts. Moreover, despite the passage of time, I have seen nothing that leads me to a different conclusion.
13. For all the reasons given, I conclude that the appellant has failed to prove on the balance of probability that the use of the property changed to use as a self-contained residential unit on or before 1 June 2016 and that this use then continued for at least 4 years after without significant interruption. Accordingly, the appeal under ground (d) must fail.

Ground (f)

14. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. It is clear that the purpose of the Notice is to remedy the breach, since it requires the unauthorised use to cease.
15. The appellant suggests that the existing kitchen should be allowed to remain as part of the annexe to allow for a degree of independence. However, the kitchen clearly facilitates the unauthorised use since it affords the occupant/s the facilities required for day-to-day private domestic existence. A lesser requirement, without removal of the facilities which enable that use, would provide no control on the future use of the building without continual monitoring, which would be unreasonable.
16. Given the requirement to remove the kitchen and associated fixtures and fittings, it is reasonable to require the removal of waste and debris generated as a result. The requirements go no further than is necessary to achieve the purpose of remedying the breach and so the appeal under ground (f) must fail.

² In respect of appeal reference APP/B0230/X/19/3238225

Conclusion

17. For the reasons given above I consider that the appeal should not succeed. I have upheld the enforcement notice.

M Savage

INSPECTOR